Jong Sin Fui (Guardian of the child Jong Nyuk Fong) v Public Prosecutor

HIGH COURT (KUCHING) — CRIMINAL APPEAL NO 41-01-97-I
STEVE LK SHIM J
29 APRIL 1997

Criminal Procedure *— Appeal — Right of — Juvenile court's order that child be placed in a children's home until the age of 18 — Whether juvenile court's order appealable to High Court — Whether juvenile court's order pronounced in a criminal case or matter — Criminal Procedure Code (FMS Cap 6) s 307(i) — Juvenile Courts Act 1947 s 14*

The juvenile court, presided by a magistrate, made an order ('the order') under s 22(1)(d) of the Child Protection Act 1991 placing the appellant's child in a children's home until he attained the age of 18. The child had earlier alleged that the injuries had been caused by his father, the appellant.

The appellant appealed against the order. The deputy public prosecutor raised a preliminary objection, namely, that the appellant had no right of appeal against the order made by the juvenile court as the order was not made by a magistrate's court in a criminal case or matter in compliance with the provisions of s 307(i) of the Criminal Procedure Code (FMS Cap 6) ('the CPC'). Counsel for the appellant countered by contending that the appeal was made in reliance upon the provisions of s 14 of the Juvenile Courts Act 1947 ('the Act').

Held, dismissing the appeal:

It was clear from the provisions of s 14 of the Act that the procedure for any appeal against an order of the juvenile court would have to comply with the provisions of the CPC, including s 307(i). The crucial question for determination in this case was whether the proceedings in the juvenile court were criminal in nature and form and that the order made by it was made in a criminal case or matter.

Two conditions had to be satisfied in order that a matter may be a criminal cause or matter: (i) it must involve the consideration of some charge or crime; and (ii) the charge must be preferred or about to be preferred before some court or judicial tribunal having jurisdiction to impose punishment for the offence.

In the present case, the facts showed that although the appellant had been suspected of causing the injuries on the child, he had not been charged nor was there any indication or likelihood that he would be charged. In fact, he had not even been apprehended by the relevant authority. In the circumstances, the order could not be said to have been made by the juvenile court in a criminal cause or matter falling within the provisions of s 307(i) of the CPC. Therefore, the appellant had no right of appeal under s 307(i) (see pp 863B–C, H–I and 864A–C); *Amand v Home Secretary & Anor* [1943] AC 147 and *Ang Gin Lee v PP* [1991] 1 MLJ 498 followed.

A **[Bahasa Malaysia summary**

Mahkamah juvana, yang bersidang dengan seorang majistret, membuat satu perintah ('perintah tersebut') di bawah s 22(1)(d) Akta Perlindungan Kanak-Kanak 1991 yang meletakkan anak perayu di sebuah rumah kanak-kanak sehingga dia mencapai umur 18 tahun.
B Si anak telah mengatakan sebelum ini bahawa kecederaan telah disebabkan oleh ayahnya, iaitu perayu.

Perayu merayu terhadap perintah tersebut. Timbalan pendakwa raya membangkitkan satu bantahan permulaan, iaitu bahawa perayu tidak mempunyai hak merayu terhadap perintah tersebut yang dibuat
C oleh mahkamah juvana kerana perintah tersebut tidak dibuat oleh sebuah mahkamah majistret dalam kes atau perkara jenayah menurut peruntukan s 307(i) Kanun Acara Jenayah (NMB Bab 6) ('KAJ'). Peguam perayu menentang dengan menghujahkan bahawa rayuan dibuat dengan bergantung kepada peruntukan s 14 Akta Mahkamah Juvana 1947 ('Akta tersebut').

D

Diputuskan, menolak rayuan:

Adalah jelas daripada peruntukan s 14 Akta tersebut bahawa prosedur untuk sebarang rayuan terhadap satu perintah mahkamah juvana haruslah mematuhi peruntukan KAJ, termasuk s 307(i). Persoalan utama
E untuk penentuan dalam kes ini adalah sama ada prosiding dalam mahkamah juvana adalah bersifat dan berbentuk jenayah dan bahawa perintah yang dibuatnya telah dibuat dalam kes atau perkara jenayah.

Dua syarat perlu dipenuhi supaya ia menjadi kausa atau perkara jenayah: (i) ia mesti melibatkan pertimbangan pertuduhan atau
F jenayah; dan (ii) pertuduhan mestilah dibuat atau akan dibuat di hadapan sebuah mahkamah atau tribunal kehakiman yang mempunyai bidang kuasa untuk mengenakan hukuman atas kesalahan itu.

Dalam kes ini, fakta-fakta menunjukkan bahawa walaupun perayu disyaki menyebabkan kecederaan kepada si anak, dia tidak dipertuduhkan, dan tidak juga terdapat sebarang bukti atau
G kemungkinan bahawa dia akan dipertuduhkan. Pada hakikatnya, dia tidak pun ditangkap oleh pihak berkuasa relevan. Dalam keadaan-keadaan demikian, perintah tidak boleh dikatakan telah dibuat oleh mahkamah juvana dalam kausa atau perkara jenayah yang dirangkumi oleh peruntukan s 307(i) KAJ. Maka, perayu tidak mempunyai hak
H merayu di bawah s 307(i) (lihat ms 863B–C, H–I dan 864A–C); *Amand v Home Secretary & Anor* [1943] AC 147 dan *Ang Gin Lee v PP* [1991] 1 MLJ 498 diikut.]

Notes

I For cases on right of appeal, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 375–432.

Cases referred to

Amand v Home Secretary & Anor [1943] AC 147 (folld)
Ang Gin Lee v PP [1991] 1 MLJ 498 (folld)

Legislation referred to

Child Protection Act 1991 s 22
Criminal Procedure Code (FMS Cap 6) s 307(i)
Juvenile Courts Act 1947 s 14

Bernard Philip (*Detta Samen & Co*) for the appellant.
Thomas Akin (Deputy Public Prosecutor) for the respondent.

Steve LK Shim J: In this case, the appellant Jong Sin Fui had apparently appealed against the decision or order of the juvenile court given on 14 December 1996. I say 'apparently' because, although the notice of appeal and the petition of appeal filed by the appellant through his solicitors Messrs Detta Samen & Co Advocates, Kuching had made specific reference to the magistrate's court, the said decision or order was clearly one made by the juvenile court presided by a magistrate. At the outset of this appeal, the learned deputy public prosecutor raised a preliminary objection, namely, that the appellant had no right of appeal against the order dated 14 December 1996 made by the juvenile court as the said order was not made by a magistrate's court in a criminal case or matter in compliance with the provisions of s 307(i) of the Criminal Procedure Code (FMS Cap 6) ('the CPC').

The brief facts giving rise to this appeal can be stated herein. On 23 October 1996, the child Jong Nyuk Fong, aged 9 years, was admitted to the Sarawak General Hospital in Kuching, because of certain physical injuries on his leg. The child alleged that he was branded on the leg with a hot iron by his father, the appellant in this case. The social welfare department then conducted an investigation and subsequently filed an application under s 22 of the Child Protection Act 1991 ('the Act'). The juvenile court, upon considering the relevant reports as well as what counsel for the appellant had to say, thereafter made an order under s 22(1)(d) of the Act placing the child in a place of safety, namely, Rumah Kanak-Kanak, Datuk Ajibah Abol in Sri Aman, until he attains the age of 18 years. Against that decision or order the appellant, who is the father of the child, has now appealed.

The main thrust of the preliminary objection related to the provisions of s 307(i) of the CPC. He contended that the appellant had no right of appeal against the order of the juvenile court dated 14 December 1996 as the said order was not made by a magistrate's court in a criminal case or matter within the provisions in s 307(i) of the CPC. Mr Bernard Philip, counsel for the appellant, countered by contending that the appeal was made in reliance upon the provisions of s 14 of the Juvenile Courts Act 1947 which stipulate as follows:

> (1) The Public Prosecutor or any child or young person or his parent or guardian if aggrieved by any finding or order of a Juvenile Court may appeal to the High Court against the finding or order in accordance with any law in force for the time being regulating criminal appeals to the High Court from a Court of a Magistrate of the First Class.

A (2) Any appeal under this section shall, notwithstanding any other written law, be intituled 'Juvenile Appeal' and in dealing with any such appeal the provisions of ss 5 and 5A shall, mutatis mutandis, apply to the High Court.

Reading the provisions above, it seems clear that the procedure for any B appeal against the finding or order of the juvenile court would have to comply with the provisions of the CPC, in particular those governing criminal appeals to the High Court from the magistrate's court. Such provisions would include those under s 307(i) of the CPC. Here, the crucial question for determination is whether the proceedings in the juvenile court were criminal in their nature and form and that the order made by C it was one made in a criminal case or matter. The Supreme Court in *Ang Gin Lee v PP* [1991] 1 MLJ 498 had considered s 307(i), in particular the words 'criminal case or matter' therein. This is reflected in that part of the judgment of Hashim Yeop Sani CJ (Malaya) (as he then was) which states (at pp 500–501):

D The second ground set out in the judgment of the learned judge is the construction of the words 'criminal case or matter' under s 307(i) of the Criminal Procedure Code. Section 307(i) of the CPC provides that any person who is dissatisfied with any *judgment, sentence or order pronounced by a magistrate's court in a criminal case or matter to which he is a party* may prefer an appeal to the High Court against such judgment, sentence or order.

E To satisfy that provision, the order must first of all be a final order.

...

There is no doubt in the present case that the order has a final effect and disposes of the right of the applicant. But that is not the end of the matter. To satisfy s 307(i) of the Criminal Procedure Code, it is also F necessary to answer the equally crucial question — was the order made in a criminal case or matter?

...

We have in fact another local case quite helpful on the same question, that is the case of *PP v Chin Keow* [1947] MLJ 55. In that case, Spenser-Wilkinson J sat in appellate criminal jurisdiction and relied on *Amand v* G *Home Secretary & Anor* [1943] AC 147 for the authority that if a cause or matter is one which, carried to its conclusion, might result in the conviction of the person charged and in a sentence of some punishment, it is a criminal cause or matter.

Amand itself relied on *Clifford and O'Sullivan* [1921] 2 AC 570 where H Viscount Cave laid down two conditions to be satisfied in order that a matter may be a criminal cause or matter. The two conditions laid down by Viscount Cave are firstly, it must involve the consideration of some charge or crime, that is, of an offence against the public law; and secondly, the charge must be preferred or about to be preferred before some court or judicial tribunal having or claiming jurisdiction to impose punishment for the offence. I

Quite clearly, the two conditions laid down by Viscount Cave in *Amand v Home Secretary & Anor* [1943] AC 147 in determining whether a matter can be regarded as a criminal cause or matter have been accepted by the

Supreme Court in *Ang Gin Lee*. It is therefore in that light that the present case has to be considered. Here, the facts show that although the appellant who is the father of the child has been suspected of causing the injuries on the child, he has not been charged nor is there any indication or likelihood that he will be charged. In fact, he has not even been apprehended by the relevant authority. None of the conditions laid down in *Amand* have therefore been satisfied. In the circumstances, the order dated 14 December 1996 cannot be said to have been made by the juvenile court in a criminal cause or matter falling within the provisions of s 307(i) of the CPC. It should perhaps also be noted here that the said order is a final order in the sense that it is final in effect. It disposes of the matter concerning the custody of the child in accordance with the provisions of s 22(1)(d) of the Act.

For the reasons given, I hold that the appellant has no right of appeal under s 307(i) of the CPC. The preliminary objection of the learned DPP is hereby sustained. Accordingly, this appeal is dismissed.

Appeal dismissed.

Reported by Jafisah Jaafar